
**May 7, 2003**

**COMMENTS OF**

**AMERICAN AUTOMOTIVE LEASING ASSOCIATION**

**SUBMITTED TO THE U.S. DEPARTMENT OF ENERGY**

# REGARDING DOE's PRIVATE & LOCAL GOVERNMENT FLEET DETERMINATION

**68 Fed. Reg. 10320, March 4, 2003**
**Docket No. EE-RM-FCVT-03-001**

Public Hearing
Washington, D.C.
May 7, 2003

The American Automotive Leasing Association (AALA) appreciates the opportunity to comment on DOE's determination that a regulatory requirement for the owners and operators of certain private and local government fleets[1] to acquire alternative fueled vehicles (AFVs) is not "necessary," and thus cannot and should not be promulgated, because such a program would result in no appreciable increase in the percentage of alternative fuel and replacement fuel used by motor vehicles in the United States. *68 Fed. Reg. 10320 (Mar. 4, 2003)*. The private fleet program is discretionary under section 507(e) of the Energy Policy Act of 1992 (EPAct), but subject to very prescribed limitations. These comments explain why AALA believes that DOE's determination is right as a matter of law and policy.

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[1] Although these comments refer to private fleets, our analysis also applies to local government fleets.

## AALA and the Fleet Industry

AALA is a trade association representing the commercial fleet leasing and management industry, which comprises approximately 3,280,000 of the cars and light duty vehicles used by business throughout the United States. While these vehicles predominantly are used for sales and service functions, the range of commercial and state and local governmental fleet usage is significant.

In contrast to the consumer car leasing business that limits itself to offering the retail public alternative financing, AALA members provide comprehensive fleet consulting and management services to commercial, non-profit, and governmental organizations. The range of services includes --

> (1) selecting and acquiring the most appropriate and cost-effective vehicle for the particular work to be performed;
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> (2) assisting in operating and maintaining those vehicles safely and economically, including designing and implementing fueling, maintenance, registration, and safety programs, as well as helping ensure that each vehicle is recycled out into the secondary market at the most appropriate time; and
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> (3) reclaiming, at end of the lease, the highest value from the vehicle through auction, public sale, or other disposal.

These services generate sizeable energy and environmental benefits, two of which are highlighted below:

> (1) **Accelerated introduction of newer, cleaner, and more fuel-efficient vehicles into the broader vehicle market**. It is well established that older vehicles make a disproportionately large contribution to mobile source

emissions and degraded fuel economy performance.[2] These problems are compounded by the fact that general population vehicles are turned over relatively infrequently. Newer vehicles, on the other hand, are cleaner and more fuel efficient. Because managed fleet vehicles are turned over faster than general population vehicles[3], AALA member companies accelerate the introduction of cleaner and more fuel efficient vehicles into the broader vehicle market. The vehicles that AALA member companies turn over, moreover, have been properly maintained, unlike most general population vehicles.[4]

(2) **Rigorous adherence to manufacturer-recommended maintenance schedules, plus other routine maintenance check-ups, leading to improved fuel economy**. Managed fleet vehicles are rigorously maintained in order to maximize vehicle life and performance. That maintenance also enhances vehicle fuel economy.[5] According to a 1995 study by EPA, for example, if vehicle wheel alignment is off by only half an inch, fuel economy (and fuel consumption) may be reduced by as much as 10%. *Fuel Economy Impact of RFG (EPA 420-F-95-003, Aug. 1995)*.

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[2] *Some Issues in the Statistical Analysis of Vehicle Emissions, T. Wenzel, B. Singer & R. Slott, J. of Transportation & Statistics, Vol. 3, No. 2, at 5 (Sept. 2000); Zero-Emission Vehicles: A Dirty Little Secret, H. Gruenspecht, Resources for the Future, no. 142, at 7 (Winter 2001); 2002 Smog Check Evaluation, State of California, I/M Review Committee, at ES-3, 4 (June 19, 2000)*.

[3] A 2001 AALA membership survey indicated that the average replacement cycle for managed fleet cars and LDTs is 32.3 months/64,000 miles (i.e., 2.7 years) and 41.4 months/77,600 miles (i.e., 3.5 years), respectively. In contrast, the typical general population vehicle is 8.3 years old and is driven approximately 11,000-12,000 miles annually. *Growth in Motor Vehicle Ownership & Use: Evidence from the Nationwide Personal Transportation Survey, at 9.*

[4] Data from the Car Care Council demonstrate that a relatively high percentage of general population vehicles fail a variety of routine maintenance inspection items. www.carcarecouncil.org.

[5] The 2001 AALA membership survey also indicated that the majority of AALA members monitors fuel economy as a measure of vehicle performance. Due to technologies such as fleet-sponsored refueling credit cards, fuel economy data are essentially collected and monitored in real time.

These energy and environmental benefits are jeopardized if managed fleets are regulated in a manner that compels private or government fleet operators to disband their organized fleets and replace them with alternatives, such as driver reimbursement programs. A driver reimbursement program consists of privately owned, general population vehicles in the hands of company or government agency employees. The data discussed above demonstrate that, in comparison to fleet-managed vehicles, general population vehicles almost certainly would be operated and maintained in a manner that fails to optimize emissions and fuel economy performance. They also would be turned over at a slower rate than fleet-managed vehicles, a development which would retard, not expedite, the introduction of better-performing vehicles into the broader vehicle market.

A private fleet mandate under EPAct would have been a good example of the type of regulatory program that could have persuaded fleet operators to replace their managed fleets with driver reimbursement programs. This is because, faced with an AFV mandate, fleet operators would have been forced to deal with a host of practical difficulties associated with acquiring AFVs (i.e., reliable supplies of needed vehicles frequently are not available), fueling AFVs (i.e., the refueling infrastructure simply does not exist), and maintaining AFVs (i.e., AFVs cost more to maintain than non-AFV vehicles). The business decision regarding how a company or other entity meets its transportation needs can be and frequently is sensitive to issues such as regulatory burden and market-driven costs. DOE wouldn't have had to do much, in other words, to make driver reimbursement programs operationally and cost-competitive with privately managed fleets.

Such an external influence, likely resulting in a significant portion of those 2.3 million vehicles moving from a controlled fleet management program to an uncontrolled driver reimbursement situation, has a harmful impact on the public, as well as the efficiency of the private sector.

For these and other reasons, AALA has participated throughout DOE's decision-making process by, for example, submitting comments and participating in workshops. We are pleased that DOE, at the conclusion of that process, has decided not to regulate the vehicle acquisition decisions of private fleets. We believe that decision was the only option available to DOE based upon the rulemaking record. We also believe the decision will preserve the environmental and energy benefits that managed fleets provide.

Comments

Our comments are divided into two sections. We first discuss why we support DOE's legal determination that a private fleet program is not "necessary" under EPAct, with a particular emphasis on why such a finding cannot be made even if the Department could lawfully revise the 2010 fuel replacement downward by a sizeable amount. Second, we briefly explain why DOE's decision furthers sound public policy goals and in a manner that supports the legal determination under section 507(e).

## I. The Private Fleet Rule is Not "Necessary" Under Any Fuel Replacement Goal

In comments submitted in support of DOE's September 26, 2000 workshop in Washington, DC, AALA discussed the various statutory limits on the discretionary program for private fleets under title V of EPAct.[6] At the time, DOE had described the statutory restrictions as "extremely restrictive," an assessment with which we agreed.[7] We concluded then that the only viable option available to DOE was so-called Option #1 under the department's discussion paper for the rule – i.e., no regulatory requirement for local government and private fleets. We will not repeat our original reasoning here other than to note that our position has not changed since 2000. We continue to believe that the only conclusion which may be drawn from the

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[6] *Comments of AALA Submitted to the U.S. Department of Energy Regarding EPAct's Discretionary AFV Program for Local Government and Private Fleets (Oct. 9, 2000).*

[7] *Discussion Paper for State and Local Government Stakeholder Meetings to Discuss Alternative Fueled Vehicle Acquisition Requirements for Private and Local Government Fleets, at 6.*

information in the rulemaking record is that a private fleet program is not "necessary" under EPAct. Nothing has been added to the record since 2000 that would enable DOE to make a determination other than not to regulate private fleets. If anything, the record in recent years has been supplemented with additional data that supports that conclusion that the prerequisites for regulating private fleets under section 507(e) cannot be satisfied. Those data include, for example, the news that replacement fuels accounted for less than 3% of total motor fuel consumption in 2001, "up" from "slightly less than" 2% in 1992. *68 Fed. Reg. at 10342.* That information indicates that EPAct's 30%/2010 goal is essentially unreachable at this late date. *See 68 Fed. Reg. at 10321 (DOE noting that "extraordinary measures" would be required to achieve the 30%/2010 goal*). In sum, we believe that DOE not only made the right decision from AALA's perspective, but that the Department made the only decision possible based upon the record before it.

We limit our comments here to a few aspects of DOE's determination that a private fleet rule is not "necessary" within the meaning of EPAct. We understand that DOE's "necessity" determination is based in large measure upon various statutory limits, including, for example, the definitions of covered vehicles and fuels. *68 Fed. Reg. at 10321 ("The statutory definitions of vehicles and fuels in EPAct* are *the key to DOE's determination")*. Those limits helped to convince the Department that, even if a mandate were implemented, it "would not appreciably increase the use of replacement fuel." *68 Fed. Reg. at 10323.* We agree that the statute limits the scope of any private fleet program, which means, in turn, that even if the program were implemented as broadly as possible, the impact on replacement fuels would be negligible.

DOE appropriately goes further, however, and clarifies that it also was unable to make the two specific subordinate findings that support a "necessity" determination. Under section 507(e), those subordinate findings are that the 30%/2010 goal is (i) not expected to be actually achieved without such a fleet program requirement, and (ii) practically and actually

achievable through implementation of such a private fleet mandate in combination with voluntary means. *68 Fed. Reg. at 10341*.[8]

We encourage DOE to explain why the "necessity" finding could not be met even if the Department modified the fuel replacement goal. DOE has explained why it elected not to modify the fuel replacement goal, and we agree with all of those considerations. *68 Fed. Reg. at 10342.* We are particularly persuaded by the fact that (i) the 30%/2010 goal is aspirational, such that it might make little sense to revise it downward by a large margin; and (ii) Congress is poised to enact new comprehensive energy legislation.

We recommend that DOE go further, however, and explain in detail why the section 507(e) "necessity" findings could not be met even if DOE decided to revise the replacement fuel goal downward by a sizeable margin. DOE could do so by noting that (i) a private fleet rule might, at best contribute 0.2 to 0.8% towards a modified goal *68 Fed. Reg. at 10341*); and (ii) the nation is currently at about 2.8% replacement fuel usage, and perhaps less. Accordingly, assuming best conditions, the 2010 goal might have to be revised downward to perhaps no more than 3%. That goal would be illogical, as well as arbitrary and capricious, because Congress set the goal for 2000 at 10% (which also was not met). Congress surely would not have wanted DOE to revise the 2010 goal downward to a level less than that provided for the year 2000.

Even if it could be argued that it would be lawful for DOE to revise the 2010 EPAct goal downward and in a manner that conflicted with the statutory scheme, the miniscule contribution towards such a revised goal that regulation of private fleets might provide could not be guaranteed in light of DOE's separate finding that the private fleet contribution would be "highly

[8] We encourage DOE to ensure that the specific findings (which are in proposed form on page 10341, column 1 of the Federal Register notice) fully comport with the language in section 507(e).

uncertain" under all scenarios. *68 Fed. Reg. at 10341*. In other words, a "necessity" finding could not be met even if the 2010 goal could be lawfully revised downward to 3%.

The record reveals that regulation of private fleets simply will not help the nation achieve any fuel replacement goal. No other conclusion is possible based upon the rulemaking record. We encourage DOE to make that point clear.

## II. Incentives are better Public Policy

AALA believes that DOE's decision furthers several important policy goals, too. First and foremost, the past decade has demonstrated that fleet mandates such as these are not effective in achieving their goal.[9] Despite DOE's best efforts under EPAct, including AFV programs for federal and fuel provider fleets, replacement fuels accounted for less than 3% of total motor fuel consumption in 2001 (*68 Fed. Reg. at 10342*), well short of EPAct's 30% goal by 2010. The Administration's May 2001 Energy Policy Report similarly noted that the EPAct fleet scheme is not sound policy:

> The success of the federal alternative fuel programs has been limited, however. The program focuses on mandating that certain fleet operators purchase alternative fueled vehicles. The hope was that this vehicle purchase mandate would lead to expanded use of alternative fuels. That expectation has not been realized.

*National Energy Policy: Report of the National Energy Policy Development Group, at I-14, 6-9 (May 2001)*.

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[9] AALA has long expressed its preference for incentives instead of mandates. The effectiveness of incentives is well established. *The Changing Face of Transportation, at 5-25* (U.S. DOT, Preliminary Draft, Sept. 2000) ("history … suggests technological and institutional evolution work best in concert with market forces and reinforce other important societal goals"); *Energy Policy Act of 1992: Limited Progress in Acquiring Alternative Fuel Vehicles and Reaching Fuel Goals*, at 5 (GAO/RCED-00-59, Feb. 2000) (noting that tax credits and other financial incentives could help fleets overcome economic impediments posed by AFVs and alternative fuels) ("GAO Report").

Recognizing that mandates do not work, the Administration has recommended that the federal alternative fuels program be reformed to promote the use of alternative fuels "instead of mandating the purchase of vehicles that ultimately run on petroleum fuels." *Id. At 6-9.* This very issue remains in play on the Hill as debates regarding comprehensive energy legislation continue. Although it is too early to predict the outcome of those debates, it is quite possible that Congress will enact a new renewable fuels program that would greatly increase the transportation industry's consumption of ethanol and perhaps other renewable fuels. Although we have not taken a formal position on such a renewable fuels program, our initial reaction is that such a program could do more to decrease the nation's reliance on imported petroleum fuels than an AFV fleet mandate program could ever hope to achieve.

DOE would be in good company in issuing a strong statement against such mandates. Late last month, in a hearing held on April 24th at which CARB decided to do away with its ZEV mandate, CARB Chairman Alan C. Lloyd remarked that "Mandates [such as the ZEV mandate] alone cannot overcome the nature of physics … or some other technical challenges that are bedeviling both the industry and us." *California Adopts Changes to ZEV Program Giving Automakers Reprieve from Quotas, Daily Report for Executives, A-3 (BNA, April 28, 2003).*

Second, and to the extent that policymakers desire to modify the nation's use of transportation fuels, whatever policy is selected must be applied broadly and upstream, not narrowly and downstream. An example of the former is the renewable fuels program that is currently being debated in Congress. If enacted, it would have the potential to affect fuel consumption in literally millions of vehicles nationwide. An example of the latter is the discretionary private fleet program under EPAct. Nothing in DOE's voluminous rulemaking record indicates that the imposition of AFV mandates at the level of individual fleets could ever hope to make a noticeable dent in the nation's fuel consumption pattern. As DOE itself has stated (*68 Fed. Reg. at 10339*),

> A potential private and local fleet program under authority provided to DOE by EPAct would be expected to contribute, at best, an extremely small amount toward achievement of replacement fuel goals. Even without the statutory limits in EPAct [on such a fleet program], such a contribution would still be very small.

Third, and as discussed above, managed fleets provide a variety of environmental and energy benefits that would undermined, if not eliminated, were the vehicle acquisition decisions of such fleets to be regulated. Managed fleets currently serve as important accelerators in the introduction of newer, cleaner, and more efficient vehicles into the general vehicle market. It makes little sense for the government to institute policies that subvert those important benefits.

Finally, we find it interesting that the policy considerations regarding fleet mandates (i.e., mandates simply do not work and if anything are counter-productive) lead to the same conclusion as that provided by the legal analysis under section 507(e) (i.e., mandates simply do not work because as a factual matter that do not contribute to any fuel replacement goal). DOE should take comfort from these results, too.

## Conclusion

AALA supports DOE's determination that a private fleet rule is not "necessary" within the meaning of section 507(e) of EPAct. We encourage DOE to bolster that determination with a specific finding that the "necessity" analysis could also not be satisfied even if DOE were to revise the 30%/2010 goal dramatically downward and in a manner that conflicted with the statutory scheme. We also recommend that DOE note that private fleet mandates reflect poor public policy for several reasons, including the subversion of the various environmental and energy benefits that managed fleets provide.

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We appreciate the opportunity to submit these comments.

Paul Smith
Environmental Counsel
American Automotive Leasing Association